



Rhymer. Rhymer cross-appeals alleging that he is entitled to a new trial on the issue of pain and suffering because the jury returned a verdict for past and future medical expenses but awarded zero for pain and suffering. We conclude that the trial court erred when it issued a judgment against Kentucky Farm Bureau in excess of the stacked uninsured policies limit and, therefore, reverse and remand. Rhymer's cross-appeal is moot.

Rhymer was injured when the vehicle he was operating collided with a vehicle operated by Homer Nantz, Jr. Rhymer filed a negligence action against Nantz and an UM action against Kentucky Farm Bureau. Nantz did not defend the complaint against him.<sup>1</sup>

Kentucky Farm Bureau stipulated that Nantz was an uninsured motorist and legally liable for Rhymer's damages. Thus, the only issues for trial were the cause, extent, and amount of Rhymer's damages. Further, it was not disputed that Rhymer could stack five policies issued to him to provide total uninsured coverage of \$125,000.

A jury trial was held after which a verdict was returned awarding Rhymer \$16,990 for past medical expenses, \$150,000 for future medical expenses, and \$30,000 for lost wages. It awarded "\$0" for past and future pain and suffering. The trial court issued a judgment awarding \$196,990 against Kentucky Farm Bureau.

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<sup>1</sup> Rhymer did not designate Nantz as a party to this appeal. Therefore, we address only the issue regarding the amount of the judgment entered against Kentucky Farm Bureau.

Rhymer filed a motion for a new trial on past and future pain and suffering and Kentucky Farm Bureau filed a motion for new trial and alternative motion to alter, amend, or vacate judgment arguing that the judgment amount could not exceed the limits of the five policies. After the trial court denied both parties' motions, this appeal and cross-appeal followed. We first address Kentucky Farm Bureau's appeal.

A UM case is a first-party contract action between an insured and an insurance company. "From its inception, we have recognized UM coverage is *first party coverage*, which means that it is a contractual obligation directly to the insured which must be honored even if the tortfeasor cannot be identified." *Coots v. Allstate Ins. Co.*, 853 S.W.2d 895, 898 (Ky. 1993). Like underinsured motorists coverage, the insured's rights arise by contract and an insurance company's obligation is to pay its own insured for uncompensated damages to the extent of the UM policy limit. *See Philadelphia Indemnity Ins. Co. v. Morris*, 990 S.W.2d 621, 626 (Ky. 1999).

Because a UM claim is a contract action, Rhymer cannot recover an amount exceeding the coverage provided in the stacked policies issued by Kentucky Farm Bureau. Despite the express limits stated in the policies, Rhymer argues to this Court that he should be able to recover the entire amount from Kentucky Farm Bureau because it refused to pay and required that the UM claim be litigated. Stated differently, Rhymer alleges that Kentucky Farm Bureau

refused to settle his claim in bad faith and, therefore, he is entitled to a judgment against it in the entire amount awarded.

The fallacy in Rhymer's contention is that he did not file a bad faith action. Although he filed a motion to amend his complaint, an amended complaint was not attached to his motion and an amended complaint was not filed until after the case was appealed. Moreover, the issue of bad faith was not presented to the jury. As a basic tenant of appellate law, we will not review issues not presented to the trial court and presented for the first time on appeal. *Keeton v. Lexington Truck Sales, Inc.*, 275 S.W.3d 723 (Ky.App. 2008).

Rhymer's contention that he is entitled to a new trial on the issues of past and future pain and suffering is moot. Regardless of any additional amounts that a jury might award, Rhymer's recovery cannot exceed \$125,000 against Kentucky Farm Bureau.

Based on the foregoing, the judgment of the Laurel Circuit Court is reversed and the case remanded for a judgment awarding Rhymer \$125,000 plus interest against Kentucky Farm Bureau.

ALL CONCUR.

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